IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.8618 OF 2004

Shri.Mahendra Vithoba Gandhi
and Anr. ..Petitioners

Vs.

Shri.Milind Rajaram Redies
and Ors. ..Respondents

....

Mr.Rajiv Patil with Sachind Punde for Petitioners
Ms.Naina Thatte for Mr.S.M.Oak for Respondent no.1

....

CORAM : B.H.MARLAPALLE,J.
DATE : MARCH 23,2005

P.C.:

1. Heard Mr.Patil with Mr.Sachin Punde, the learned counsel for the petitioners.

2. The petitioners have been impleaded as defendants in R.C.S.No. 152 of 2000 and in the said suit, the application at Exh.5 was filed for temporary injunction restraining the defendants from creating any obstruction to the peaceful possession of the plaintiffs over the suit property. After hearing both the parties, the learned Jt.Civil Judge J.D. at Alibaug by an order dated 19.9.2001, was pleased to allow the said application for temporary injunction and the defendants nos. 1 and 2 have been restrained from creating any obstruction to the peaceful possession of the plaintiffs over the suit properties till the final disposal of the suit. This order came to be challenged in Misc.Civil Appeal No.89 of 2001

by the defendants before the District Court at Alibaug. The learned Additional District Judge was pleased to dismiss the said appeal vide his judgment and order dated 7.9.2004 and hence, this petition.

3. The plaintiffs as well as the defendants claimed ownership and possession over the suit properties and that too through Bhau and his wife Sushila on the basis of gift-deeds. The trial Court was therefore required to examine whether the plaintiffs or the defendants were in possession at the time when the suit was filed. The respective parties had also placed some documents on record. The trial Court noted that the plaintiffs were successful in making out a prima facie case to support their possession over the suit properties and the documents relied upon by the defendants did not make out a case in their favour.

4. The 7x12 extract of the suit properties since 1994-95 went to show that the plaintiff no.2 along with Sushila was recorded as the owner and in possession and cultivation column, the name of plaintiff no.1 was shown. The extracts of assessment list of house nos.132, 160 and 186 for the year 2000-2001 stood in the name of plaintiff no.1. Affidavits were filed by the cultivators and tenants and they went to show that the plaintiffs were in

possession of the suit properties. The last important document that found favour with the plaintiffs was the affidavit submitted by the mother of defendant no.2 i.e. Mrs. Mira Madhikar Radeej filed in Civil Suit No. 62 of 1993 on 7.11.1993. In the said affidavit she had contended that Bhau and Sushila were in the exclusive possession of the suit premises and neither she nor her daughter had any right or interest in the suit premises.

. On the other hand, the documents relied upon by the defendants were gift and lease-deeds dated 10.10.1991 and the notice issued by the M.S.E.B. on 6.3.1995 in the name of defendant no.1. The trial Court noted that the said notice issued by the M.S.E.B. did not give description of the properties where the electric pump was to be installed and therefore, it was of no consequence even to consider the prima facie evidence of possession. The findings recorded by the trial Court for a prima facie case in favour of the plaintiffs, have been examined and confirmed by the lower appellate Court. These concurrent findings do not warrant any interference at the hands of this Court in a petition under Article 227 of the Constitution of India as they cannot be termed as grossly erroneous or perverse.

5. The petition is therefore, rejected summarily.

[B.H.MARLAPALLE,J.]